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DIVISION II

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STATE OF WASHINGTON

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COURT OF APPEALS STATE OF WASHINGTON  
DIVISION II

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DONALD LEO,

Appellant.

v.

DIANA COURT OWNERS ASSOCIATION, an unincorporated  
association; and VISTA VILLAGE RECREATION AND  
MAINTENANCE ASSOCIATION, a not-for-profit corporation,

Respondents.

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BRIEF OF RESPONDENT VISTA VILLAGE RECREATION AND  
MAINTENANCE ASSOCIATION

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## **I. INTRODUCTION**

Defendant-respondent Vista Village Recreation and Maintenance Association (VVRMA) asks this court to affirm the superior court's entry of judgment of dismissal in their favor.

In this action, plaintiff-appellant Donald Leo (Mr. Leo) challenges the bylaws applicable to the Diana Court Condominium Owners Association and the assessment of costs for maintaining, repairing, and replacing limited common areas solely against those who benefit the particular limited common area. The superior court correctly dismissed Mr. Leo's claims on summary judgment because as a matter of law, the VVRMA bylaws are enforceable against the members of the Diana Court Owners Association and the VVRMA is entitled to impose the cost of repair of limited common areas against solely the owners of the units who benefit from them.

## **II. ASSIGNMENTS OF ERROR**

### *Assignments of Error*

VVRMA assigns no error to the superior court's decision.

### *Issues Pertaining to Assignments of Error*

Mr. Leo presents an overcomplicated statement of these issues. To the contrary, this case presents two straight-forward issues, which VVRMA believes are more correctly stated as follows.

Whether this court should affirm summary judgment dismissal of Mr. Leo's claims where:

1. The 2014 and/or 2015 amendments to the bylaws are valid and enforceable against the Diana Court unit owners; and
2. The applicable bylaws, the Diana Court Declaration, and relevant statutory scheme all entitle the VVRMA to impose the cost of repair and maintenance of limited common elements against solely those owners who benefit from them.

### **III. STATEMENT OF THE CASE**

#### **A. The VVRMA is the master association governing five individual courts.**

The VVRMA is a non-profit corporation tasked with governing the Vista Village Condominium Community. CP 30. The community at large consists of five individual courts – Athena Court, Bacchus Court, Calypso Court, Diana Court, and Electra Court. *Id.* Each court has an individual Court Owner's Association ("COA") and the presidents of the five COAs comprise the Board of Directors of the VVRMA. *Id.* The five COAs have delegated the right to establish assessments and dues to the VVRMA. *Id.*

#### **B. The VVRMA Articles of Incorporation vest the Board with the power to make assessments and adopt, repeal, and amend bylaws.**

The modern day VVRMA was first established as the Panorama Park Recreation Maintenance Association when it filed its Articles of

Incorporation on April 28, 1972. CP 129. On July 15, 1981, the Articles of Incorporation were officially amended to change the association to its current name. CP 124. Among other powers, the Articles of Incorporation vest the VVRMA with the authority to levy assessments, adopt bylaws, and proscribe voting rights. CP 126-31.

The property, voting and other rights and privileges and liabilities to charges and assessments of the members shall be set forth in the by-laws of the Association.

CP 129.

The Board of Directors shall have the power to alter, amend or repeal the by-laws or adopt new by-laws.

CP 130.

**C. The Diana Court Declaration expressly authorizes the VVRMA to act on its behalf and expressly binds owners of Diana Court units to the rules, regulations, and bylaws established by the VVRMA Board of Directors.**

The Diana Court Declaration requires its unit owners to become a member of the VVRMA and binds them to the rules, regulations, and bylaws established by VVRMA's Board of Directors. CP 21-23.

Every person or entity acquiring an ownership interest in a living unit under this Declaration shall become a member of the Vista Village Recreational and Maintenance Association, and by acquiring said ownership interest shall become **bound by the rules and regulations and By-Laws of said Association** as established by the Board of Directors of the Vista Village Recreational and Maintenance Association; and further....

Membership in the Vista Village Recreational and Maintenance Association **shall include the obligation to pay dues and assessments as established by the Board of Directors of said Association** according to the By-Laws of the Vista Village Recreational Maintenance Association.

*Id.* (emphasis added).

**D. Pursuant to the powers granted to it, the VVRMA adopted and later amended bylaws applicable to Diana Court.**

In the early-1990s, the VVRMA adopted an initial set of bylaws applicable to each of the five COAs. CP 50-59. The VVRMA properly amended these bylaws in both 2014 and 2015. CP 61-75; 76-90. The Certificate of Adoption of the 2014 bylaws is signed by the presidents of all courts. CP 75. The Certificate of Adoption of the 2015 bylaws is signed by the presidents of all courts, except Diana Court. CP 90. The 1990 and 2014 VVRMA bylaws were amended pursuant to the same procedure which allows for amendment by a Court Board after referral and consideration by all Court Boards and with the concurrence of two other Court Boards. CP 54; 67.

While Mr. Leo appears to dispute which bylaws are in effect, all three versions of the bylaws contain the same clause which tracks the clause found in the Diana Court Declaration requiring compliance with the bylaws adopted by the VVRMA. CP 50; 61-62; 76-77.

All present and future owners, mortgagees, lessees and occupants of living units and their employees or any other



persons who may use the facilities of the condominium in any manner are subject to these bylaws, the declarations, the rules and regulations, and all covenants, agreements, restrictions, assessments and declarations of record (title conditions). **The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a living unit shall constitute an agreement that these bylaws, the rules, regulations, and policies, the provisions of the Declarations, as they may be amended from time to time, and the title condition are accepted, ratified and will be complied with.**

*Id.* (emphasis added).

**E. In compliance with the Diana Court Declaration, the bylaws authorize assessments for the cost of repair and maintenance of limited common elements against solely those who benefit from them which complies with the Diana Court Declaration.**

The 2014 and 2015 versions of the bylaws contain identical clauses detailing the unit owners' responsibility with respect to limited common area<sup>1</sup> or element<sup>23</sup>. CP 70-71; 85-86.

*Owner's Responsibility.* Except for those portions which the COAs and the VVRMA are required to maintain and repair hereunder (if any), **each owner shall at said owner's expense keep** a) the interior of such unit and its equipment and appurtenances in good order, condition and repair...b) **in accordance with RCW 64.34.360, the limited common area servicing the unit,** including

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<sup>1</sup> The older version of the statute (Horizontal Property Regimes Act) refers to "limited common areas," which are defined as "those common areas and facilities designated in the declaration... as reserved for use of a certain apartment or apartments to the exclusion of other apartments." RCW 64.32.010(11).

<sup>2</sup> The newer version of the statute (Uniform Condominium Act) refers to "limited common elements," which are defined as "the common elements allocated by the declaration or by operation of RCW.34.204 (2) or (4) for the exclusive use of one or more but fewer than all units." RCW 64.34.020(27).

<sup>3</sup> For the sake of brevity, VVRMA will refer to limited common element.

plumbing, siding, electrical, water, sewer, telephone and/or cable lines in or passing through such limited common area.... [T]he owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heaters, furnaces, lighting fixtures, refrigerators, air conditioning equipment, dishwashers, disposal or ranges that may be in, or connected with the living unit, except as otherwise provided herein.

*Additional Owner's Responsibility.* The owner shall also at the owner's own expense, keep the patio, storage shed and carports which have been assigned to such living unit as limited common area in a clean and sanitary condition.

*Id.* (emphasis added). This provision of the bylaws complies with the Diana Court Declaration because the VVRMA can make limited common element assessments to Diana Court owners in "like proportions, unless otherwise provided herein." CP 18.

Within thirty (30) days prior to the beginning of each fiscal year, the Board shall estimate the net charges to be paid during such year, including a reasonable provision for contingencies and replacements (less any expected income in any surplus from the prior year's fund). In establishing each unit's share of the "estimated cash requirements", some costs will be allotted evenly, others by unit square footage, as the Board deems appropriate. If said sum estimated proves inadequate for any reason, including nonpayment of any owner's assessment, the Board may at any time levy a further assessment, **which shall be assessed to the owners in like proportions, unless otherwise provided herein. Each owner shall be obligated to pay assessments made pursuant to this paragraph** to the Board in equal monthly installments on or before the first of each month during such year, **or in such other reasonable manner as the Board shall designate.**

*Id.* (emphasis added). As noted above, every Diana Court owner must become a member of the VVRMA and every VVRMA member is bound to pay dues and assessments as established by the VVRMA Board. CP 22.

#### **IV. SUMMARY OF ARGUMENT**

The Diana Court Declaration expressly binds its unit owners to the bylaws adopted by the VVRMA Board of Directors. The bylaws were properly amended in 2014 and again in 2015. Both the 2014 and 2015 versions of the bylaws authorize the assessment of costs associated with limited common elements against solely those owners who benefit from them. The trial court's entry of judgment in favor of the VVRMA and the Diana Court Owners Association should be affirmed.

#### **V. ARGUMENT**

##### **A. The standard of review is *de novo*.**

This court reviews an order granting summary judgment *de novo*, performing the same inquiry as the trial court. *Sheikh v. Choe*, 156 Wn.2d 441, 447, 128 P.3d 574 (2006); *Smith v. Safeco Ins., Co.*, 150 Wn.2d 478, 483, 78 P.3d 1274 (2003). The court may affirm a judgment on any ground established by the pleadings and supported by the evidence. *Green v. A.P.C. (Am. Pharmaceutical Co.)*, 136 Wn.2d 87, 94, 960 P.2d 912 (1998); *Stieneke v. Russi*, 145 Wn. App. 544, 559-60, 190 P.3d 60 (2008). “[A]n appellate court can sustain the trial court’s judgment upon any

theory established by the pleadings and supported by the proof, even if the trial court did not consider it.” *LaMon v. Butler*, 112 Wn.2d 193, 200-01, 770 P.2d 1027 (1989), *cert. denied*, 493 U.S. 814, 110 S. Ct. 61, 107 L. Ed. 2d 29 (1989); *see also Northwest Collectors, Inc. v. Enders*, 74 Wn.2d 585, 595, 446 P.2d 200 (1968) (“[t]he trial court can be sustained on any ground within the proof”); *Kirkpatrick v. Dept. of Labor & Indust.*, 48 Wn.2d 51, 53, 290 P.2d 979 (1955) (“[w]here a judgment or order is correct, it will not be reversed because the court gave a wrong or insufficient reason for its rendition”).

Here, the record supports the trial court’s ruling that the bylaws are enforceable against the members of the Diana Court Owners Association and that the VVRMA was entitled to assess the expenses related to limited common areas against solely the owners who benefit from them.

**B. The bylaws apply to Diana Court unit owners.**

Paragraph 21 of the Diana Court Declaration provides a mechanism to adopt bylaws for the administration of Diana Court and the other four courts. CP 21-22. Significantly, the Declaration also requires every unit owner to be a member of the VVRMA and binds its members to the rules, regulations and bylaws set forth by the VVRMA Board of Directors. *Id.*

Every person or entity acquiring an ownership interest in a living unit under this Declaration shall become a member of the Vista Village Recreational and Maintenance Association, and by acquiring said ownership interest shall become **bound by the rules and regulations and By-Laws of said Association** as established by the Board of Directors of the Vista Village Recreational and Maintenance Association; and further....

Membership in the Vista Village Recreational and Maintenance Association **shall include the obligation to pay dues and assessments as established by the Board of Directors of said Association** according to the By-Laws of the Vista Village Recreational Maintenance Association.

*Id.* (emphasis added). Mr. Leo does not dispute that the 1990 bylaws were valid and enforceable. CP 30. Paragraph 21 of the Diana Court Declaration expressly binds the members of the Diana Court Owners Association to the bylaws. Accordingly, the key question is whether the amendments of 2014 and/or 2015 were valid.

**1. The VVRMA properly amended the bylaws applicable to the Diana Court Owners Association in 2014.**

The 1990 bylaws provide an amendment mechanism which is found in Article V.

These bylaws, or any part thereof, may be altered or amended by a Court Board after referral and consideration by all Court Boards, and, with concurrence of two other Court Boards, subject to the power of all owners to change or repeal such bylaws by a majority vote at any general meeting of all owners called for that purpose.

CP 54. On April 16, 2014, the presidents of each of the five individual COAs signed a “Certification of Adoption,” which states:

We hereby certify that the foregoing are the Amended and Restated Bylaws of the COAs representing Athena, Bacchus, Calypso, **Diana**, and Electra Courts, adopted by the respective COAs at meetings called for that purpose during the months of February and March 2014.

CP 75 (emphasis added). Mr. Leo’s contention that the 2014 amendments are invalid is simply not supported by record and flies in the face of a signed document expressly stating otherwise. The 2014 bylaws were properly adopted.

The 2014 bylaws provided the same mechanism to amend bylaws as the 1990 version. CP 82. On October 21, 2015, the bylaws were again amended consistent with the procedure described above. CP 90. This time, the “Certification of Adoption” contains the signatures of four of the five individual COA presidents. *Id.* Despite no signature from the Diana Court Owners Association president, the amendments are effective because more than two COAs adopted the bylaws. CP 82, 90.

Even if the 2015 bylaws were not properly adopted, the 2014 bylaws were properly adopted and both include identical language concerning limited common elements. CP 70-71; 85-86. This is the bulwark of the dispute as discussed in section D.

**2. Paragraph 11 of the Diana Court Declaration does not entitle Diana Court unit owners to reject bylaws validly adopted by the VVRMA**

Mr. Leo's extensive reliance on paragraph 11 of the Diana Court Declaration is unavailing. This paragraph, which authorizes adoption of bylaws for the administration of Diana Court, is only a portion of the relevant inquiry, whereas Mr. Leo's position is that this paragraph begins and ends all debate. His position is not supported by law because "the preferred interpretation [of a contract] gives meaning to all provisions and does not render some superfluous or meaningless." *Bogomolov v. Lake Villas Condo. Ass'n of Apartment Owners*, 131 Wn. App. 353, 361, 127 P.3d 762 (2006) (interpreting a condominium declaration). Paragraph 14, as described at length above, could not more clearly bind Diana Court unit owners to pay the dues and assessments as established by the VVRMA Board of Directors. CP 46-48. Thus, only one interpretation of the Diana Court Declaration complies with *Bogomolov* and gives meaning to all provisions. If Mr. Leo's proffered interpretation controls, the individual COAs essentially have veto power and would potentially not be bound to pay certain the dues and assessments established by the VVRMA Board (rendering the express provision requiring payment for these VVRMA Board assessments superfluous). If VVRMA's interpretation controls, then the individual COAs have the ability to adopt their own court bylaws,

but cannot contravene the law or the Diana Court Declaration. Refusing to adhere to validly amended bylaws clearly contravenes the Diana Court Declaration.

**C. Even if the trial court misunderstood that the VVRMA adopts bylaws applicable to all courts, the result remains the same.**

The court may affirm a judgment on any ground established by the pleadings and supported by the evidence. *Green*, 136 Wn.2d at 94. As discussed previously, the Diana Court Declaration expressly binds Diana Court unit owners to these bylaws adopted by the VVRMA. CP 46-48. The fact that there are not two sets of bylaws does not compel a different result in this action. Diana Court can adopt their own bylaws pursuant to paragraph 11, but any bylaws adopted by it cannot contravene the law or the Declaration. Mr. Leo's proffered interpretation gives the individual court's the ability to contravene the Declaration by disclaiming each unit owners' express "obligation to pay dues and assessments as established by the Board of Directors ... according to the By-Laws of the Vista Village Recreational and Maintenance Association." CP 47. Paragraph 11 of the Declaration simply cannot grant this ability to contravene the express provisions of other portions of the Declaration.



**D. The VVRMA is entitled to impose the cost of repair of limited common elements against solely those unit owners who benefit from them.**

Mr. Leo's specific contention is that he, along with only the two other owners who also benefit, was charged one-third of the cost of repair of the parking structure that these three unit owners apparently share. However, the provision of the Declaration on which plaintiff relies to assert that the cost should be borne equally by all VVRMA members is incomplete and actually provides further evidence that the VVRMA Board can make these assessments against only the owners who benefit from the limited common element. When properly read together, the bylaws, the applicable statutory scheme, and the Diana Court Declaration all entitle the VVRMA Board to impose the cost of operation, maintenance, and repair of limited common elements solely against the owners who are associated with them.

**1. The bylaws permit assessment of expenses related to limited common elements against solely those who benefit.**

Pursuant to the bylaws (both the 2014 and 2015 versions), each owner, including Diana Court owners, must maintain and repair limited common areas.

*Owner's Responsibility.* Except for those portions which the COAs and the VVRMA are required to maintain and repair hereunder (if any), **each owner shall at said owner's expense keep** a) the interior of such unit and its

equipment and appurtenances in good order, condition and repair...b) **in accordance with RCW 64.34.360, the limited common area servicing the unit....**

CP 70-71, 85-86 (emphasis added). Significantly, the amended bylaws specifically reference RCW 64.34.360.

**2. The relevant statutory scheme permit assessment of expenses related to limited common elements against solely those who benefit.**

This statutory provision provides further support for the notion that the VVRMA Board is authorized to impose the costs of repair upon solely the owners benefitting from a particular limited common element or limited common area.

RCW 64.34.360 provides in relevant part:

(3) To the extent required by the declaration:

(a) Any common expense associated with the operation, maintenance, repair, or replacement of a limited common element shall be paid by the owner of or assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides.

Mr. Leo's contention that this portion of the statute requires limited common element expenses to be borne equally is incorrect for at least two reasons. First, the Diana Court Owners Association is not assessing the limited common element costs. The VVRMA Board is assessing these costs pursuant to the Diana Court Declaration expressly granting it that power and in conjunction with the validly adopted bylaws. Second, and

most significantly, Mr. Leo continues to neglect a vital piece of the statutory provision, which states:

**(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; ....**

RCW 64.34.360 (emphasis added).

**3. Because the Diana Court Declaration incorporates the bylaws by reference, the Declaration requires assessment of expenses related to limited common elements against solely those who benefit.**

The Declaration of Diana Court requires Diana Court owners to pay the dues and assessments as established by the VVRMA Board. CP 21-22. Both the 2014 and 2015 bylaw amendments require unit owners to bear the expenses related to limited common elements benefitting them. CP 70-71, 85-86.

Paragraph 14 of the Diana Court Declaration deals with common expenses and assessments. Subsection (a) of paragraph 14 of the Diana Court Declaration states:

Within thirty (30) days prior to the beginning of each fiscal year, the Board shall estimate the net charges to be paid during such year, including a reasonable provision for contingencies and replacements (less any expected income in any surplus from the prior year's fund). In establishing each unit's share of the "estimated cash requirements", some costs will be allotted evenly, others by unit square footage, as the Board deems appropriate. If said sum estimated proves inadequate for any reason, including nonpayment of any owner's assessment, the Board may at

any time levy a further assessment, **which shall be assessed to the owners in like proportions, unless otherwise provided herein.** Each owner shall be obligated to pay assessments made pursuant to this paragraph to the Board in equal monthly installments on or before the first of each month during such year, or in such other reasonable manner as the Board shall designate.

CP 42-43. Here, a further assessment is expressly authorized and it is to be collected in like proportions, “unless otherwise provided herein.”

Mr. Leo’s issues with respect to limited common elements clearly falls under the “otherwise provided herein” clause because (1) the Declaration expressly binds them to the bylaws and (2) the bylaws expressly require unit owners benefitting from the limited common area or element to bear the costs of repair and/or maintenance.

Accordingly, in line with the bylaws, relevant statutory scheme, and the Diana Court Declaration, the VVRMA Board is entitled to assess the maintenance and repair costs of limited common elements against only the owners who benefit from them.

**E. Not only is Mr. Leo not entitled to attorney fees, but VVRMA is entitled to its fees on appeal.**

Under RCW 64.34.455, the prevailing party in this action may be awarded attorney fees. “When a statute authorizes fees to the prevailing party, they are available on appeal....” *Eagle Point Condominium Owners Ass’n v. Coy*, 102 Wn. App. 697, 716, 9 P.3d 898 (2000) (awarding fees under the statute to the condominium association defending its judgment

on appeal). Here as in *Eagle Point*, the court should award reasonable attorney fees to VVRMA that it expended to defend its judgment.

Alternatively, the court should refrain from awarding fees to Mr. Leo should he prevail on some or all claims. Mr. Leo's one sentence assertion that he has "incurred significant attorneys' fees ... to enforce the Diana Court unit owners' rights" does not unilaterally make "this an appropriate case for an award of attorneys' fees." Mr. Leo's assertion at least implies he brought this action to benefit others and not just himself, yet this ignores the practical reality of the relief he seeks. Should the court adopt Mr. Leo's interpretation of the governing documents, the VVRMA will almost certainly be forced to substantially raise the assessments for unit owners in all courts to cover the expenses they currently do not. Mr. Leo's implied assertion that he is enforcing the rights of others is awfully presumptuous because it is unlikely that many unit owners would like to see a substantial increases in their assessments. This provides an additional reason for the court to refrain from awarding attorney fees, should the court find in favor of Mr. Leo on some or all issues.


## **VI. CONCLUSION**

The superior court properly denied Mr. Leo's summary judgment motion and entered final judgment in favor of VVRMA and the Diana Court Owners Association. The bylaws were properly amended in 2014

and again in 2015 and the Diana Court Declaration expressly binds its unit owners to those bylaws. Both the 2014 and 2015 versions contain identical language which obligates solely the unit owners who benefit to bear the expenses associated with the limited common elements at issue. Accordingly, this court should affirm the superior court's entry of judgment in favor of VVRMA and the Diana Court Owners Association.

Respectfully submitted this 18th day of January, 2017.

LEE SMART, P.S., INC.

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BY [Signature]  
DEPUTY

**DECLARATION OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on January 18, 2017, I caused service of the foregoing pleading on each and every attorney of record herein:

**VIA LEGAL MESSENGER**

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